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ABSTRACT

Employee privacy rights are considered, along with practical problems and permissible parameters of employer activity. Included is a state-by-state analysis of the status of workplace privacy. Definitions are offered of "invasion of privacy," with attention to four types of privacy invasions: (1) placing someone in a "false light," (2) the public disclosure of embarrassing private facts, (3) intrusion into someone's solitude, and (4) misappropriation of someone's right to publicity, to the pecuniary advantage of the defendant. Avoiding invasion-of-privacy and defamation claims requires a coordinated program of information management covering all phases of the employment relationship. For the following employment issues, legal protections are examined, along with actions that can be taken to implement and maintain a management information policy: preemployment screening procedures, employee records, use of polygraphs, drug testing, employee searches and surveillance, regulation of nonworking time, and employment references. The state guide to right-to-privacy includes citations of relevant statutes and case law, along with narrative explanation. (SW)

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EMPLOYEE PRIVACY RIGHTS
A MANAGEMENT GUIDE

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By Ira Michael Shepard and Harry Olsen

CUPA

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Contents

Acknowledgments

Introduction 1

Common Law Privacy Rights 2

- Origins Of The Right To Privacy
- Invasion of Privacy: General Definitions
  - False Light
  - Public Disclosure of Private Facts
  - Intrusion
  - Misappropriation
- Defamation: Libel and Slander

The Right To Privacy In The Employment Setting 4

- Preemployment Screening Procedures
  - Questionnaires (Employment Applications)
  - Polygraphs
  - Drug Testing of Job Applicants
- Workplace Privacy Issues
  - Employee Records
  - Polygraphs
  - Employee Searches and Surveillance
  - Drug Testing of Current Employeès
  - Regulation of Nonworking Time
  - Employment References

Preventive Maintenance 11

- Questionnaires (Employment Applications)
- Polygraphs
- Employee Records
- Employee Searches and Surveillance
- Regulation of Nonworking Time
- Drug Testing (Job Applicants and Employees)
- Employment References

Status of Workplace Privacy Law: State-By-State Analysis 14

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Introduction

The issue of employee privacy is quickly becoming one of the most dynamic and important areas of employee relations. The principal consideration involves the continuing tension between an employer's right and need to manage the work force and the reasonable privacy expectations of its employees. This daily struggle has recently received widespread attention due to the dramatic increase in drug testing in the workplace and the litigation which has erupted over such testing. However, privacy-related litigation reaches well beyond drug-testing questions.

Today, employees are bringing invasion-of-privacy suits in connection with all aspects of the employment relationship, from the initial job interview to letters of reference. Yet, as workplace privacy issues continue to sharpen, both employers and employees are discovering that many of the legal theories that control their respective rights are not well-settled. Thus, while legislatures and courts attempt to establish guidelines defining the competing privacy interests in the workplace–the right of an employer to investigate and the right of an employee to be left alone–it is essential that employers gain an understanding and appreciation of the issues emerging in this area of the law.

This publication, *Employee Privacy Rights: A Management Guide*, addresses the practical problems and permissible parameters of employer activity against the backdrop of the developing law of workplace privacy. After presenting a brief overview of employee privacy rights, the authors have organized the discussion around specific phases of employment, from preemployment screening procedures to workplace issues. Preventive measures also are covered. The text is followed by a state-by-state survey of workplace privacy law.

Common Law Privacy Rights

Origins of the Right to Privacy

No express privacy provision is found in the United States Constitution and a "right to privacy" was not even implicitly recognized during the first century and a half of United States history. It was not until 1982 that Supreme Court Justice Louis D. Brandeis, in his dissenting opinion in *Olmstead v. United States*, argued that the protection provided by the Fourth Amendment against unreasonable searches and seizures extended beyond physical invasions of protected space to include "the right to be let alone."[1] However, the other Justices rejected this theory and their position prevailed until 1965 when, in *Griswold v. Connecticut*,[2] the Supreme Court recognized an implied privacy right existing within the "prenumbra" of the Bill of Rights and the Fourteenth Amendment.

The Constitutional privacy protections arising from the *Griswold* decision apply to the actions of the federal government and the states, but not to the acts of private employers. Absent specific state or federal legislation, only the common-law torts of "invasion of privacy" and "defamation" define the privacy rights of private employees.

Invasion of Privacy: General Definitions

Courts generally recognize four distinct varieties of the tort of, or civil action for, invasion of privacy: (1) placing someone in a "false light," (2) the public disclosure of embarrassing private facts, (3) intrusion into someone's solitude, and (4) misappropriation of someone's right to publicity, to the pecuniary advantage of the defendant.[3]

False Light

The "false light" tort involves publicity which places the plaintiff in a false light in the public eye. It requires a showing that the false light in which the individual was placed would be highly offensive to a "reasonable person."[4] One example is a published photograph that depicts a group of "wild-cat" strikers, but includes a person who was merely passing by as the picture was taken. Another example is that of an employee wrongfully accused of dishonesty, publically reprimanded, and discharged with broad communication to the remaining employee complement. When an invasion-of-privacy claim is brought under "false light," a defamation claim (described below) also may be brought.

Public Disclosure of Private Facts

The private-facts tort involves public disclosure of true but embarrassing private facts.[5] Generally, the tort is composed of five elements: (1) publicity, or (2) identification of the plaintiff (3) relating to facts of a private nature, which (4) are not of general interest and (5) the publication of which would be highly offensive to a reasonable person. Some states also require either knowledge or reckless disregard of the information's offensive nature. Unlike "false light," this tort is committed when the defendant discloses true but generally nonpublic information that would offend the sensibilities of a reasonable person, such as publicity regarding one's debts. Disclosure of accurate medical and psychiatric diagnoses and treatment, without the employee's knowledge or permission, has been found to be an actionable invasion of privacy.

Intrusion

The tort of intrusion protects against surreptitious surveillance and similar acts.[6] Intrusion involves interference with the solitude of another by conducting an examination into the plaintiff's private life, such as opening his or her personal mail or similar acts that would be objectionable to a person of reasonable sensibilities. Since the tort is based on psychological distress caused by the loss of the right to be left alone, it is not necessary that the defendant learn anything embarrassing or "private" about the plaintiff or disclose information improperly acquired. Intrusion cases have been brought in the employment setting as a result of searches of employees' personal belongs, contrary to the employer's policies and practices, which had given the employees an expectation of privacy. Intrusion cases also have been brought in response to discharges for socializing or dating employees of a competitor company.

Misappropriation

The tort of misappropriation involves situations in which one person, without authorization, appropriates to his or her commercial use or benefit the name or likeness of another.[7] No recovery on this theory will be permitted where a plaintiff's name or likeness is used in connection with the publication of newsworthy matters. For example, a sports magazine may legally print a photograph of a baseball star hitting a home run. If, however, a soft drink manufacturer takes a similar photograph and makes it into an advertisement for the product, without the baseball star's permission, a claim for misappropriation may be maintained. This cause of action is rarely used in the employment setting.

Defamation: Libel and Slander

The tort of defamation occurs when a communication tends to harm the reputation of another so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.[8] This tort is subdivided into libel and slander. Libel constitutes defamation by writing, while slander involves defamation through speech. Defamation may occur in the employment setting when an employer discloses to a third party false information that tends to injure an employee's reputation. In business defamation, a direct financial injury is presumed since the defamatory statement adversely relates to the plaintiff's particular trade or profession.

Truth is an absolute defense to all actions for libel or slander. In addition, either an "absolute" or "qualified" privilege may apply. An absolute privilege, as the name implies, gives complete protection to the defendant in spite of bad motives, negligence, or even deliberate falsehoods. Absolute privileges are usually a function of the special status of the defendant and the context of the statement in relation to that status. For example, a statement is absolutely privileged when made during judicial proceedings, including unemployment hearings and arbitrations.

A number of qualified (or conditional) privileges exist that may be raised as defenses, provided all three of the following conditions are met: (1) the statement was made in good faith; (2) it regards a subject matter in which the person communicating has an interest or toward which he or she has a duty; and (3) the communication is made to a person having a corresponding interest or duty. It is well-settled in most states that communications arising out of the employer-employee relationship enjoy a qualified privilege. The majority of courts are in agreement that when a former employer communicates with a new or prospective employer about a former employee, or with a union in the grievance process, a conditional privilege arises from the former employer's discharge of duty owed to the new or prospective employer.[9] However, the privilege is lost when the communication is not made honestly or is made with malicious intent. References provided by an employer generally fall within a qualified privilege.

The Right To Privacy In The Employment Setting

In all phases of employment, two distinct types of employee privacy interests are involved: (1) "informational privacy" (i.e., information about an employee, such as prior criminal convictions or mental health problems or treatment or (2) "behavorial privacy" (i.e., activity of an employee off and on the job, such as disclosure of facts relating to substance abuse, employee theft, or inadequate work performance). In each of these areas of interest, the employment setting creates tension between an employee's concern about control over "private facts" and an employer's interest in information that will promote effective management of the work force. Legal protections extended to each of these competing interests in various phases of the employment process are examined below.

Preemployment Screening Procedures

Requirements that employees complete questionnaires or submit to polygraph examinations, blood tests, or urinalysis are motivated by the ever-expanding liability of employers for the actions of their employees, as well as by concern for employee safety and productivity. Historically, employers were free to ask almost any question and gather any information they desired during the application process, but the scope of information which now may be legitimately requested has been curtailed greatly by both privacy-related litigation and civil rights laws. Each of the specific screening devices discussed below involves distinct employee privacy issues. Since drug testing raises separate privacy questions in both screening and employment phases, it is covered in both the "Preemployment" and "Workplace Privacy Issues" sections.

Questionnaires (Employment Applications)

While information requested on questionnaires clearly may raise privacy considerations, much of the law in this area is directed at avoiding injury to protected classes. Questions relating to a person's age, race, religion, height, weight, marital status, sex, national origin, and nonjob-related mental or physical impairments may infringe on legally protected civil rights. Except where there exist bona fide occupational requirements, these questions are inherently improper aside from possible privacy implications. In addition, many states prohibit employers from asking a prospective employee if he or she has been arrested.[10] Other states simply prohibit employers from requesting information relating to criminal matters that did not result in convictions. Finally, almost half the states have added "marital status" as a protected area under their human rights laws. In Minnesota, for example, four wives who were denied employment in their husbands' corporations were ruled to be victims of discrimination.[11] In states with similar legislation, questions relating to marital status should be deleted from employment applications.

Polygraphs

In 1985, approximately four million employees were asked to submit to polygraph examinations, up from 300,000 workers tested in 1975.[12] This dramatic increase in polygraph testing is due to the belief of many employers that such tests provide a relatively inexpensive method ($50-$60 per exam) for detecting unqualified or deceitful applicants. However, because of the polygraph's poor reliability (accuracy estimates range from 50 to 70 percent[13]) and its potentially abusive applications, slightly more than half the states either restrict or prohibit the use of polygraph examinations for employment-related purposes. Maryland requires a boldface notice on employment applications stating that lie detectors cannot be used in making employment decisions. Congress is considering legislation at the time of this writing that would ban the use of polygraphs in certain employment situations in both the public and private sectors.[14]

Drug Testing Of Job Applicants

An ever-increasing number of employers now include drug testing as part of the preemployment screening process. This practice is hardly surprising in light of recent studies that have shown that employees who are involved in alcohol or substance abuse have greater health care costs than other employees, are absent from work more often, require more disciplinary at-

tention, and are more likely to be involved in work-related accidents.

When substance-abuse screening is implemented during the preemployment phase, there appear to be few legal constraints for private sector employers since the Constitutional prohibition against unreasonable searches and seizures applies solely to the activities of government entities. Private-sector employers, unless prohibited by state law, may require job applicants to submit to urinalysis or blood testing. In addition, the criminal due process standard of "beyond a reasonable doubt" does not apply to an employer's decision to reject a job applicant because of suspected alcohol or illegal drug activity. Unless sex, race, or age discrimination is involved, job applicants do not generally have either privacy-based or other legal grounds on which to challenge drug-screening programs. However, since the law is still developing in this area, new employee protections may appear.

One area of current concern is the potential for race discrimination suits in connection with urinalysis in drug testing. Recent studies disclose that melanin, a dark skin pigment, can break down in urine into chemical substances very similar to those that are connected with marijuana use.[15] Thus, dark-skinned people run a higher risk than whites of being wrongly suspected of having used marijuana. These circumstances might support a race-bias claim under a disparate impact theory. To date, however, there has been no case law that supports this conclusion.

Workplace Privacy Issues

Employee privacy issues commonly arise in the workplace from the maintenance of records on employee productivity, attendance, and discipline; the surveillance of employees and the searching of their possessions; and the regulation of conduct during nonworking hours.

Employee Records

As the amount of personnel information gathered by employers has increased, so also has the potential for invasion-of-privacy claims resulting from the maintenance and dissemination of this data. The Privacy Act of 1974[16] protects the privacy interests of federal employees in their personnel files. Under the Act, federal agencies are required to maintain and publish a system of records so that employees can be reasonably well-informed of the types of records that exist. Agency employees also may gain access to most of the information in the system pertaining to them. In addition, the Act places restrictions on the personnel information that an agency can disclose without prior, written consent of an employee. A number of states have adopted similar privacy acts which protect the rights of state employees, including employees of state colleges and universities.[17]

Some states prohibit employers from making or keeping records relative to criminal matters not relating to convictions. Other states regulate the disclosure of credit information. Most states recognize a right of privacy in medical records and limit access by third parties to such information.

A number of states have enacted "right-to-know" acts that allow employees to gain access to their personnel records. One such act in Michigan prohibits employers from making or keeping, without an employee's written consent, records of the employee's associations, political activities, publications, or communications of nonemployment activities. Employees who are not covered by either federal or state legislation may challenge an employer's maintenance or dissemination of "private" information by asserting common-law defamation or invasion-of-privacy claims. As the following two cases reveal, the judicial response to such claims is extremely varied.

In a Massachusetts case, *Bratt v. International Business Machines, Corp.*,[18] an employee confided in his supervisor that he was experiencing headaches and had difficulty sleeping because of job-related problems. The employee's supervisor arranged for the employee to be examined by a local physician. After the examination, the doctor contacted the employee's supervisor and recommended that the employee be seen by a psychiatrist because of the possible existence of paranoid tendencies. This information was conveyed, without the employee's knowledge, to an IBM vice-president who prepared a memorandum to other management personnel on the employee's "condition." The employee brought two invasion-of-privacy claims relating to these communications against IBM, the first based on the communication

between management employees and the other on the physician-management communication. The United States Court of Appeals for the First Circuit, applying Massachusetts law, rejected the internal management communication claims on the ground that the disseminated information was relevant to the efficient management of the company and that the balance of rights weighed in favor of the employer's interest in having the information. However, the court upheld the employee's claim that IBM breached his right to privacy in allowing the physician to discuss the employee's medical problems without his permission.

Central to the court's ruling was the fact that IBM maintained a written policy on employee medical records which barred management from having direct contact with local examining physicians unless prior approval had been given by the employee. The court reasoned that the existence of company regulations protecting the confidentiality of medical information served to enhance an already existing expectation of privacy concerning such information. In finding against IBM on this issue, the court explained that IBM had "imposed upon itself a heavy burden of showing that its business interest in obtaining the information warranted a violation of its own rules."

In contrast, in *Eddy v. Brown*,[19] the Oklahoma Supreme Court threw out an employee's disclosure-of-private-facts claim in which an employee's foreman told several of the employee's coworkers that he was undergoing psychiatric treatment. A company physician had determined that the employee was "depressed" and recommended a psychiatric evaluation. The court found that there had been no "publicity," in the sense of a disclosure to the general public, because only a limited number of employees had heard that the plaintiff was undergoing psychiatric treatment. In addition, the court held that "the information about psychiatric visits was part of [the employee's] medical records [and] hence of legitimate concern to his supervisor."

The principle to be derived from the *Bratt* and *Eddy* cases is simply that the outcome of an informational privacy suit depends, to a large extent, on the degree to which a state recognizes an employee's right to privacy concerning employment records.

Polygraphs

Before the erosion of the common law "employment-at-will" doctrine that at-will employees may be fired for any reason absent specific contractual protections, employees were subject to discharge for insubordination for refusing to answer questions during polygraph examinations. However, the right of employers to use polygraph testing at all is rapidly diminishing. As discussed in the "Preemployment Screening Procedures" section, a majority of states substantially limit polygraph testing for employment-related purposes and the list of such states is growing. Employers who fail to apprise themselves of these laws may face substantial liability. A recent appellate court decision in Maryland upheld a $1.3 million damages award, consisting of $300,000 in compensatory and $1 million in punitive damages, in which an employee was discharged after refusing to submit to a polygraph examination where such use of the exam violated Maryland law.[20] Public employees as well as those covered by union contracts have substantial rights regarding the use of lie detector tests and federal legislation restricting the scope of polygraph questioning soon may be enacted. In light of these developments, competent legal advice should be obtained before adopting or implementing a polygraph testing policy.

Employee Searches and Surveillance

Private-sector employers generally have the right to search employer property used by employees on a daily basis, such as desks and lockers. In addition, employers may require that employees submit to searches of packages brought into or out of the workplace, as well as vehicles parked on the employer's premises. While employees often believe that the Fourth Amendment prohibits searches by anyone absent a search warrant, the Constitution does not protect an employee from a search by a nongovernment employer. Indeed, the fruits of the search, whether conducted by the employer or an employee, may be turned over to law enforcement authorities and may result in prosecution. Nevertheless, a right to privacy continues to gain broad application in the private sector as an increasing number of courts recognize the tort of "intrusion" as a protection against unjustified entry into an employee's reasonable "zone of privacy."[21] In one recent case in which the jury awarded $100,000 in

exemplary damages for an unconsented-to search of an employee's purse in a company locker, the Texas Court of Appeals found that the employer had created a legitimate expectation of privacy in the locker assigned to the employee.[22]

Most challenges to personal searches of private-sector employees involve a unionized setting. In *Congoleum-Nairn,*[23] government agents had made an illegal search and seizure of property (gambling forms and materials). The arbitrator rejected the use of the evidence to support the discharge of the accused employee, noting that:

> [p]rinciples embodied in the fundamental law of the land are not to be regarded lightly. Although the Fourth Amendment applies to government action, and not to the unlawful seizure of private papers by private persons, we are not confronted in the instant case with a private seizure . . . but a situation where a private employer seeks to justify its disciplinary action almost entirely upon a tainted transaction, in the form of an adjudicated unlawful search and seizure by government action . . . .

The arbitrator refused to allow the distinction between government and private action to impinge upon an employee's privacy interests.

Generally, however, the rights of employers to make reasonable searches of employees based on legitimate need has been upheld. In *Kawneer Company, Inc.*,[24] an employer attempted to search an employee's personal toolbox during business hours for gambling materials after learning that a supervisor had observed the employee in what appeared to be a gambling transaction. The employee allowed the employer to search the toolbox after he was threatened with termination for insubordination; however, only empty envelopes and some brochures describing the Illinois lottery were found. At a grievance hearing, the union claimed that the "warrantless" search violated both the Constitution and the collective bargaining agreement. The employer argued that its policy of requesting duplicate keys to employee toolboxes, as well as its usual practice of searching toolboxes which were being removed from the plant, gave it the right to an on-demand search of the workplace. Rejecting the employee's Constitutional claims as inapplicable to a private entity, the arbitrator ruled that the dual-key policy "in effect, endowed the toolboxes with a half-private and half-company property characterization." The arbitrator held that the employer had a right to search the boxes because it had reason to believe that there was a violation of properly promulgated and published rules.

Surveillance of employees in the workplace has become increasingly common in recent years as a means for combatting employee crime and improving production efficiency.[25] While this practice may adversely affect employee attitudes toward the workplace environment, employees can claim Constitutional protection from work place monitoring only when governmental action is involved. However, surveillance of employee activities away from the workplace raises significant right-to-privacy questions.

McLaine v. Boise Cascade Corporation[26] involved an investigation of an employee in which the employer successfully avoided tort liability for invasion of privacy. The employee had been injured on the job. After a period of treatment, the company's medical experts concluded that the employee was fit to return to work. The employee disagreed with the decision and argued that his disability payments should continue. Although he was given a "light-duty" assignment, the employee complained that even the fifty-found limit on lifting requirements aggravated his alleged back injury. The company hired private investigators who took movies of the employee performing various physical tasks at his home, such as mowing his lawn and rototilling his garden. The employee sued for trespass and invasion of privacy. Although the trial court awarded $250 in nominal damages for the investigators' trespass upon the employee's property, the invasion-of-privacy claim was denied. The Oregon Supreme Court upheld the ruling and noted:

> [T]he investigators did not question any of plaintiff's neighbors or friends and limited their activities to taking pictures while plaintiff was engaged in various activities outside his home. Plaintiff testified that these activities could have been viewed either by neighbors or passersby on the highway. Plaintiff further testified that he was not embarassed or upset by

anything that appeared in the films.[27]

The *McLain* case demonstrates that surveillance conducted outside the workplace is risky but may withstand scrutiny under the proper circumstances, especially where surveillance is conducted in a reasonable and unobtrusive manner.

An issue related to employee searches is the self-incrimination question. For the most part, arbitrators have held that an employee has no right to refuse to participate in a proper investigation of workplace misconduct. Therefore, fingerprinting, photographing, physical examinations, blood and other bodily fluid examinations often have been held not to breach an employee's right against self-incrimination. However, the newly emerging issue of drug testing is challenging this view.

Drug Testing of Current Employees

Drug and alcohol screening raise substantially more difficult issues where employees are involved, rather than job applicants. This is because of the greater number of constraints placed on an employer's discretion by its own personnel policies (which many states now enforce as contractually binding), statutes, and collective bargaining agreements.

Drug testing is being challenged under the multiple exceptions to the traditional "at-will" employment rule which, before its general demise, allowed employers to fire workers at any time for any reason. California and Michigan, for example, impose an "implied covenant of good faith and fair dealing in all employment relationships."[28] Employers may be liable for breach of this "covenant" when drug screening is conducted arbitrarily and improperly.

For employers in a unionized setting, drug screening is a mandatory subject of bargaining since it affects the "conditions" of employment. However, the general duty to bargain must be analyzed in light of the individual collective bargaining relationship. Thus it is possible, depending on the labor contract and bargaining history, that unilaterally imposed drug screening may be justified on the basis of an employer's right to establish and enforce safety rules and procedures.

Undoubtedly, much of the concern which employees express over drug testing arises from both the intrinsic nature of the screening techniques involved and reports describing problems with the reliability and validity of these procedures. Some drug screening tests have been shown to have error rates as high as 30 percent.[29] As discussed above, substances such as melanin may mimic the chemical properties of drug compounds. Employers who fail to recognize these testing defects may find themselves defending invasion-of-privacy claims. Second or confirmation testing is highly recommended to avoid claims of invalidity and arbitrary conduct based on the tests.

One example is *Houston Belt & Terminal Railway Co. v. Wherry*,[30] where an employee was discharged after an accident because urinalysis testing revealed traces of methadone, a substance commonly used to treat heroin addiction. A physician consulted by the discharged employee undertook further urinalysis and discovered that the urine sample contained a compound which, although similar to methadone, was not in fact that substance. Although advised of this result, the employer refused to reconsider the discharge decision. An internal accident report and a letter from the employer's director of labor relations repeated the allegation that the discharged employee was a recovering heroin addict. A jury awarded the former employee $200,000, based on defamation. This employer could perhaps have avoided litigation by not announcing the "medical" conclusions and by establishing a policy of having an independent laboratory reexamine positive test results.

Another issue involved in chemical abuse screening of current employees is whether all employees should be subject to testing, or only those who appear to be impaired by controlled substances. Neither the courts nor arbitrators have reached a definitive answer. Under Oregon law, Breathalizer tests are regulated in the same manner as polygraph examinations and may not be administered to employees (or applicants) without good cause. An ordinance recently enacted in the city of San Francisco limits drug testing of individual employees to circumstances where the employer has "reasonable grounds to believe that an employee's faculties are impaired on the job." In addition, legislation in California prohibits discrimination against employees who enter alcohol rehabilitation programs. As a practical matter, the

method and manner of drug testing is as much an employee relations issue as it is a legal one.

Whatever guidelines are ultimately established for employee drug screening, it is clear that the doctrines of invasion of privacy and defamation will continue to apply. Employers should be careful to implement such programs in a manner that provides for notice of the testing, review of the results, confidentiality, and fairness in the application of tests.

Regulation of Nonworking Time

Employer concerns about possible adverse notoriety that may arise out of employees' conduct during nonworking hours, as well as safety, security, and productivity concerns, have motivated many employers to investigate their employees' private lives. Whether the employer is a public entity or a private organization, it may well be engaging in a tortuous invasion of an employee's right to privacy when it examines an employee's activities outside the workplace.

In *Briggs v. North Muskegon Police Department*[31] the U.S. Court of Appeals for the Sixth Circuit recently upheld a federal district court ruling that the dismissal of a married, part-time officer for cohabitating with a woman who was not his wife violated the officer's right to privacy. The trial court rejected the argument that regulation of public employees' conduct could be justified by general community disapproval. Although the police department has a legitimate interest in regulating the personal sexual activities and living arrangements of its employees when such activities affect job performance, the trial court found no evidence of an adverse effect on the officer's performance.

Other courts have been less willing to extend the guarantee of personal privacy into illicit relationships. In *Suddarth v. Slane,* [32] a state trooper was terminated for adultery pursuant to a regulation that prohibited "criminal, infamous, dishonest, immoral, or other conduct prejudicial to the Department." In rejecting the trooper's claim that his First Amendment right to freedom of association and his general right to privacy were violated, the court held that by engaging in adultery, the trooper pursued an activity not protected under the First Amendment, and violated state law as well as department regulations.

Disputes over employer interference with outside relationships also have arisen in the private sector, where employers have not been successful in defending their intrusions. In *Rulon-Miller v. International Business Machine Corp.,*[33] the California Court of Appeals upheld a $300,000 jury award to a marketing manager who claimed that she was removed from her management position because she was dating a manager from a rival office products firm. The court noted that although IBM's written personnel policies prohibited its employees from becoming involved in conflicts of interest, these policies did not prohibit employees from entering into romantic relationships with the employees of competitors. Moreover, IBM had a stated policy of not interfering in an employee's private life unless it "reduce[d] his ability to perform regular job assignments, interfere[d] with the job performance of other employees, or . . . affect[ed] the reputation of the company in a major way." Although the court ultimately based its decision on a contractual privacy right based on IBM's personnel policy, claims similar to that raised in *Rulon-Miller* may be raised in the growing number of states that have greatly restricted an employer's traditional right to fire "at-will" workers for activities unrelated to work performance.

In contrast, the Oregon Supreme Court recently ruled that a department store merchandising manager who was discharged for refusing to break off a relationship with a female coworker failed to state a claim for wrongful discharge based on his Constitutional right to privacy. The court held that the Constitutional privacy protection only applied to public employers and no exception to the traditional "fire-at-will" doctrine could be based on socializing between employees.[34]

Employment References

In the area of employment references, the "law recognizes that society may benefit from uninhibited discussion of business employees and that those benefits may outweigh an employee's reputa-

tion rights."[35] Thus, an employer who is sued as a result of responding to a request for information about a former employee may assert, in addition to the defense of truth, a qualified business privilege. The qualified business privilege defense is available when an employment reference is given in good faith to one having an interest in learning of an employee's performance.

The qualified business privilege was upheld in *Duncantell v. Universal Life Insurance Company.*[36] A former debit agent was fired by the company for allegedly misappropriating $30 in sickness benefits which he had been directed to deliver to a policy holder. The policy holder asked that the agent apply the $30 toward a premium on another policy he wished to take out. When the new policy was not delivered promptly, the policy holder complained to the agent's supervisor, who rejected the agent's excuse that he had been unable to deliver the policy because of illness, and fired him. In response to queries from prospective new employers about the former agent's work record, his supervisor advised that they should "not . . . fool with" him since he could not be trusted. The company was sued for defamation and, although it could not prove that the former agent had been guilty of actual wrongdoing, the court held that:

> The publication made by [the agent] . . . was one by the former employer of the plaintiff to a prospective employer of the plaintiff. It was made to an inquiry of the prospective employer requested by the plaintiff. It related to the work record of plaintiff while he was in the employ of the publisher or the company which he represented. Under these circumstances it . . . was a qualified privileged publication and created no liability on the publisher in the absence of malice.[37]

This opinion reflected the deference commonly afforded to employers providing written or verbal employment references. Nevertheless, there are cases in which courts have held that the qualified business privilege was insufficient to outweigh the economic injury suffered by a former employee as a result of an employer's unfavorable reference. These decisions have prompted many companies to adopt a policy of responding to employment inquiries by acknowledging only the fact that the applicant was employed and reciting the dates of employment. This approach is overly cautious for most employers. The qualified business privilege generally has not been eroded to the extent that it no longer protects good-faith communications to parties having a valid business interest in an employee's prior performance. Most cases in which employers have been held liable in defamation for communications made in references involve the use of unnecessarily abusive language or other circumstances that support a conclusion that the employer acted in an ill-tempered manner or was motivated by ill-will. Good-faith responses to inquiries concerning employment are seldom actionable.

Preventive Maintenance

Avoiding invasion-of-privacy and defamation claims requires a coordinated program of information management covering all phases of the employment relationship. This section sets forth specific actions for management to take in order to implement and maintain such a policy.

Questionnaires (Employment Applications)

1. Insure that all information to be collected is necessary and relevant to processing the application and determining qualifications for the particular position sought.

2. When references, credit checks, physical exams, or substance-abuse tests will be made, clearly indicate this on the form and obtain a release from the applicant.

3. Review applicable federal and state equal employment opportunity laws to determine whether restrictions are imposed regarding questions such as marital status and prior arrests.

Polygraphs

1. Determine whether state law (or federal legislation) allows for such testing of job applicants and employees.

2. Confine interrogation topics to areas that directly relate to an applicant's qualifications.

3. Insure that only competent, experienced lie detector examiners conduct and interpret examinations.

4. When an applicant is to be denied employment, or an employee is to be discharged because of deception in response to specific polygraph examination questions, consider retesting. Do not communicate conclusions explaining the deception. An applicant or employee showing deception regarding questions relating to theft should not be identified as a "thief."

5. Design with the polygraph expert a secure and confidential procedure for reviewing adverse results if the results are demanded by an employee or applicant.

6. Maintain confidentiality of test results.

Employee Records

1. Limit access to information contained within personnel files to only those persons within the organization who have a demonstrated need to know and to third parties who are authorized either by law or by the employee to have access.

2. Do not collect irrelevant data about employees.

3. Maintain a log of access to and use of each personnel file, including a record of when the file was reviewed by the employee.

4. Periodically review personnel files to remove outdated and unnecessary information, but check retention requirements of regulatory agencies before destroying documents.

5. Communicate the organization's privacy guidelines. Designate a person to have oversight of the policy, one to whom employees can express their individual privacy concerns.

6. Determine the extent to which state law may require that employees have access to their employment records. It is recommended that even in the absence of state law, personnel files be available for employee review.

Employee Searches and Surveillance

1. Publish and post the organization's policy regarding searches of employees and follow the policy consistently.

2. Train managers and supervisors in organization policy and practice regarding searches.

3. Do not restrain employees from leaving the premises if a search is being conducted.

4. Contact appropriate authorities when suspected criminal activity is involved.

Regulation On Nonworking Time

1. Areas of off-premises conduct in which the organization has determined it has a legitimate interest should be specifi-

cally identified and communicated to employees. Note that discipline for behavior during nonworking time which is not specifically covered in the organization's code of conduct may still be justified when the activity is contrary to the organization's purpose or the employee's responsibilities.

2. Apply the organization's code of conduct consistently. Where feasible, specific problem areas of behavior should be identified with supporting facts.

Drug Testing (Job Applicants and Employees)

1. In preemployment screening, notify applicants in advance that testing is required. It is recommended that retests be given to applicants who fail the first test. Employers should avoid making statements alleging that applicants are involved in substance abuse.

2. Communicate to current employees the organization's policy on drug and alcohol abuse and apply the procedures consistently.

3. Inform individual employees of results and confirm positive tests with a second test, preferably by an independent laboratory.

4. It is recommended that an Employee Assistance Program (EAP) be adopted and dovetail with procedures established in the aftermath of positive substance-abuse testing.

5. Apply progressive discipline when discipline is necessary and provide a hearing before dismissal.

6. Maintain confidentiality of test results and avoid using medical terms to describe affected employees.

7. Where the organization is unionized, the employer should determine whether the labor contract requires bargaining before the imposition of a drug-testing program. Bargaining is recommended in any event to obtain union commitment to a drug-free workplace.

Employment References

1. Since communications relating to an employee's prior work performance are only conditionally privileged, employers should implement procedures that insure that information collected on employees is necessary to a legitimate business function and is restricted to those with a need to know. The privileged nature of the response will be lost if statements are made in spite or if they lack good faith.

2. Establish a process to insure that each person responsible for the custody of personnel files or for responding to inquiries regarding employees is familiar with the organization's policies both on gathering and releasing information.

3. Confine comments to facts and avoid generalizations not based on factual information. Do not volunteer information that is not requested.

4. Have all terminating employees sign a consent form that acknowledges the employer's right to respond truthfully to any inquiries made as part of a reference check. When information requests about employees are received, verify the identity of the reference checker.

References

[1] 277 U.S. 438, 471 (1928) (Brandeis, J., dissenting).

[2] 381 U.S. 479 (1965).

[3] *Restatement (Second) Of Torts* Sections 652 A(2) a-d (1977).

[4] *Id.* at Section 652 E(a).

[5] *Id.* at Section 652 D.

[6] *Id.* at Section 652 B.

[7] *Id.* at Section 652 C.

[8] *Restatement (Second) Of Torts* Section 559 (1977).

[9] Prosser, *Handbook of the Law of Torts*, 787-88 (4th ed. 1971).

[10] *See, e.g.*, Va. Code Sections 19.2-392.4(a)-(c) (1950).

[11] *Kraft, Inc. v. State of Minnesota*, 30 F.E.P. Cases 31 (1979).

[12] Stack, *Polygraphs and Privacy*, Florida Bar Journal, June, 1985, at 19.

[13] Harrington, *The Power of the Polygraph*, 8 Case Com., n.26, at 4 (1985).

[14] "Polygraph Protection Act of 1985," (S.1815) and (H.R. 1524).

[15] *New York Times*, May 3, 1986, p. 1.

[16] 5 U.S.C. Section 552a.

[17] See, *e.g.*, Va. Code Section 6.1-377 (1983).

[18] No. 85-1545, March 6, 1986.

[19] Okla. Sup. Ct., No. 62086, Feb. 25, 1986.

[20] *Moniodis v. Cook*, 494 A.2d 212 (Md. Ct. Spec. App. 1985).

[21] *See, e.g., Porten v. University of San Francisco*, (1976), 64 Cal. App.3d 839 (interpreting the state constitutional guarantee of privacy to apply against private individuals and institutions).

[22] *K-Mart Corp. Store No. 7441 v. Trotti*, 677 S.W.2d 632 (Tex. Ct. App. 1984).

[23] 63-2 ARB Paragraph 8843.

[24] 86 LA 297 (Alexander, 1985).

[25] Craver, *The Inquisitorial Process in Private Employment*, 63 Cornell L. Rev. 1, 54-55 (1977).

[26] 271 Ore. 549, 533 P.2d 343 (1975).

[27] *Id.*

[28] *See, e.g., Touissant v. Blue Cross & Blue Shield*, 408 Mich. 579, 292 N.W.2d 880 (1980); *Cleary v. American Airlines*, 11 Cal. App.3d 443, 168 Cal. Rpts. 722 (1980).

[29] Daily Labor Report (BNA) No. 81 at A-3 (April 28, 1986).

[30] 548 S.W.2d 743 (Ct. Civ. App. Texas 1977).

[31] 563 F. Supp. 585 (W.D. Mich. 1983), *aff'd*, 746 F.2d 1475 (6th Cir. 1984), *cert. denied*, ____ U.S. ____, 105 S. Ct. 3535 (1985).

[32] 539 F. Supp. 612 (W.D.Va. 1982).

[33] 208 Cal. Rptr. 425 (Ct. App. 1st Dist. 1984).

[34] *Patton v. J.C. Penney Co.*, 122 LRRM 2445 (Ore. 1986).

[35] Stevens, *The Letter of Recommendation As A Privileged Communication*, 16 Am. Bus. L.J., 1-2 (1978).

[36] 446 S.W. 934 (1969).

[37] *Id.* at 937.

Status of Workplace Privacy Law: State-By-State Analysis

As the cases in the above discussion demonstrate, right-to-privacy issues have been applied by arbitrators and by the courts of different states in widely divergent ways within the context of employee relations. Although virtually all states (and a growing number of municipalities) recognize some degree of employee privacy, the extent to which the right exists from state to state can mean the difference between no liability and very substantial liability for employers, depending on where the case is brought. Therefore, it is absolutely essential that managers consult corporate counsel before privacy-related litigation arises, develop preventive programs of policy formation, and disseminate such policies to supervisory personnel.

The following state-by-state survey of right-to-privacy law is not intended as a substitute for obtaining competent legal advice in this sensitive and dynamic area of employee relations. Since the case law is constantly changing, this chart serves only as an initial research guide. More important, the facts of the individual employment setting and potential case must be carefully analyzed from a legal and common-sense point of view likely to be applied by a jury. The following chart provides managers with an overview of the breadth of state responses to privacy concerns and should increase their awareness of some of the legislative and judicial decisions likely to bear on workplace right-to-privacy issues relevant to their institutions.

The chart is presented in alphabetical order by state and lists relevant legislation and court decisions. The "Scope-of-Right" section of the chart summarizes the applicable statute or case. Users of the chart should keep in mind, in addition to the general caveat given above, that the right to privacy is a rapidly developing area of the law. The clear trend is in the direction of the expansion of employees' right to privacy in the workplace. Thus, case law and legislation must be monitored closely in order to keep pace with developments in right-to-privacy law.

A STATE-BY-STATE ANALYSIS OF EMPLOYEE RIGHT-TO-PRIVACY LAW

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
ALABAMA	Smith v. Doss, 251 Ala. 250, 37 So.2d 118 (1948)	A tort of invasion of privacy is recognized in Alabama.
	Phillips v. Smalley Maintenance Services, Inc., 711 F.2d 1524 (11th Cir. 1983)	A "physical intrusion" is not necessary to state a claim for invasion of privacy. An intrusion into one's "emotional sanctum" suffices. Damages for "mental suffering," "shame or humiliation," and "other damages" are properly awarded.
ALASKA	Alaska Const. art. I, § 22	"The right of the people to privacy is recognized and shall not be infringed upon. The legislature shall implement this section."
	Alaska Stat. § 23.10.037 (1972)	An employer or his agent may not "request," "suggest," or "require" that an employee or applicant submit to a polygraph examination. This section does not apply to police officers or police officer applicants.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
ARIZONA	Ariz. Rev. Stat. Ann. §§ 44-1691, 44-1692, and 44-1693 (1967)	Governs the actions of consumer reporting agencies in compiling, maintaining, and disseminating information regarding employees which is to be used for evaluating, promoting, reassigning, or retaining an employee.
	Rivera v. City Of Douglas, 132 Ariz. 117, 644 P.2d 271 (Ariz. Ct. App. 1982)	Public employees may be ordered to submit to a polygraph examination where the order is not found to be unreasonable, arbitrary, or capricious. The order does not violate Fifth Amendment rights.
	Valencia v. Duval, 132 Ariz. 348, 645 P.2d 1262 (1982)	An employer's contacting of the company's physician regarding an employee's condition was not conduct sufficient to state a claim for intentional infliction of emotional distress or invasion of privacy.
ARKANSAS	Dodrill v. Arkansas Democrat Co., 265 Ark. 628, 590 S.W.2d 840 (1979), cert denied, 444 U.S. 1076 (1980)	A cause of action exists in Arkansas for invasion of privacy as codified in Restatement (Second) of Torts, § 652 (1977).
CALIFORNIA	Cal. Const. art. I, § 1	"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness, and privacy."

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Cal. Lab. Code § 432.7 (West Supp. 1982)	Applicants cannot be asked to disclose information regarding arrests which did not result in convictions.
	Cal. Lab. Code § 432.2 (West Supp. 1982)	An employer or his agent cannot "demand" or "require" employees or applicants to submit to a polygraph examination. The employer may "request" the employee to submit to a polygraph examination if the individual is given a written summary of his rights.
	Long Beach City Employees Ass'n v. City of Long Beach, 41 Cal.3d 937, 227 Cal. Rptr. 90, 719 P.2d 660 (1986)	The statute prohibiting an employer from demanding or requiring an applicant or employee to submit to a polygraph examination applies to both public and private employment.
	Cal. Lab. Code § 1198.5 (West Supp. 1982)	An employee has the right to inspect his/her personnel records in accordance with specified provisions.
	Cal. Lab. Code § 1798.1 (West Supp. 1982)	Governs the actions of consumer reporting agencies in compiling, maintaining, and disseminating information which is used for evaluating an employee.
	Rulon-Miller v. International Business Machines Corp., 162 Cal. App.3d 241, 208 Cal. Rptr. 524 (1984)	An employee's constitutional right to privacy was violated where the employer discharged the employee because of her romantic involvement with a manager from a rival company.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Garrett v. Los Angeles City Unified School District, 116 Cal. App.3d 472, 172 Cal. Rptr. 170 (1981)	A claim of "invasion of bodily privacy" may not be founded on the requirement that a teacher submit to a chest x-ray prior to her initial employment.
COLORADO	Wells v. Premier Industrial Corp., 691 P.2d 765 (Colo. Ct. App. 1984)	An employer did not violate an employee's right to privacy where, after notifying the employee of its intention to comply with an I.R.S. summons, the employer produced the employee's records.
	Colo. Rev. Stat. § 24-72-308(3)(f)(I) (1981)	An employer may not require an applicant to disclose any information contained in "sealed" arrest records.
CONNECTICUT	Conn. Gen. Stat. § 31-128(b) (West Supp. 1982)	Provides for inspection by an employee of personnel files maintained by an employer. An employer is required to keep personnel files for at least one year following termination of an employee.
	Conn. Gen. Stat. § 31-128(c) (West Supp. 1982)	Provides for inspection by an employee of medical records within the employer's possession. An employer is required to keep medical records for at least one year following termination of an employee.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Conn. Gen. Stat. § 31-128(f) (West Supp. 1982)	Provides the procedure and conditions for disclosure of information within an employee's personnel file and medical record. Subject to certain exceptions, information from an employee's personnel file or medical record may not be disclosed without written authorization of the employee.
	Conn. Gen. Stat. § 31-51(g) (1980)	An employer or his agent may not "request" or "require" an employee or applicant to submit to a polygraph examination as a condition of employment. An employer may not dismiss or discipline an employee for failure to take a polygraph examination.
	Jonap v. Silver, 1 Conn. App. 550, 474 A.2d 800 (Conn. Ct. App. 1984)	An employer invaded an employee's right to privacy where the employer wrongfully credited the employee with writing and publishing a letter. The employee successfully claimed that the employer's actions harmed his reputation and possible business opportunities.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Conn. Gen. Stat. § 31-486, (a) through (e) (1980)	An employer or his agent shall not "operate any electronic surveillance device or system, including but not limited to the recording of sound or voice or a closed-circuit television system, or any combination thereof, for the purpose of recording or monitoring the activities of his employees in areas designed for the health or personal comfort of the employees or for the safeguarding of their possessions such as rest rooms, locker rooms, or lounges."
DELAWARE	Del. Code Ann. tit. 19, § 704 (1975)	An employer or his agent may not "require" or "suggest" that an employee or applicant submit to a polygraph examination.
	Del. Code Ann. tit. 19, § 721 (1975)	An employee has a right to inspect his/her personnel file. An employer may require a written request from the employee.
	Avallone v. Wilmington Medical Center, Inc., 553 F. Supp. 931 (D. Del. 1982)	The fact that a former head nurse was was asked by others why she left her place of employment is insufficient, as a matter of law, to constitute an action against her former employer for invasion of privacy.
DISTRICT OF COLUMBIA	D.C. Code Ann. §§ 36-801 through 36-803 (1981)	An employer may not "administer," "have administered," "accept," or "use" the results of a polygraph examination in connection with employment or an application for employment.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
		This section does not apply to a criminal investigation or a disciplinary investigation by police officers, firemen, or the District of Columbia Department of Corrections.
	D.C. Code Ann. § 1-632.5 (1981)	Public employees' personnel files are to be established, maintained, and disposed of in a manner designed to ensure the "greatest degree of privacy." Information contained within public employees' personnel files may be made available to "appropriate" personnel and law enforcement authorities unless such disclosure would amount to an unwarranted invasion of personal privacy. Information contained within public employees' personnel files may be disclosed to the employee named in the file with certain exceptions. Before information is disclosed to others from an employee file, that employee must be given an opportunity to be heard.
FLORIDA	Fla. Const. art. I, § 23 (1980)	"Every natural person has the right to be left alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Swope v. Florida Industrial Commission Unemployment Compensation Board of Review, 159 So.2d 653 (Fla. Ct. App. 1963)	Private employees who refuse to submit to polygraph examinations may be discharged pursuant to employer rules.
	Thorne v. City of El Segundo, 726 F.2d 459 (9th Cir. 1983), cert. denied, ___ U.S. ___ 105 S.Ct. 380 (1984)	Polygraph questioning regarding the sex life of a female city police department applicant and reliance on that information in refusing employment violated her constitutional right to privacy.
GEORGIA	Ga. Code Ann. § 35-3-34 (1982)	Information gathered on applicants and current employees relating to "records of guilt" may be revealed to employers by the Georgia Crime Information Center under specified circumstances. These circumstances include employment in which the employee has custody, control, or access to cash or valuable items or where the employee must ensure the security or safety of other employees, customers, or property of the employer.
	Kobeck v. Nabisco, Inc., 166 Ga. App. 652, 305 S.E.2d 183 (1983)	To recover under a claim for invasion of privacy based upon intrusion, the element of "physical intrusion" is required. The employee could not recover under an invasion-of-privacy theory where the employer revealed the employee's sporadic attendance to her husband.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Cummings v. Walsh Const. Co., 561 F. Supp. 872 (S.D. Ga. 1983)	An employee waived any existing right to privacy as to her personal seclusion or solitude where, although she did not desire to, she engaged in sex with her supervisor. Her willingness precluded a claim of "unwarranted or uninvited physical intrusion." The employee's additional claim for invasion of privacy based upon the disclosure of private facts failed where, although defendant supervisor informed third parties of his sexual activities with the employee, the employee personally informed others of her sexual activities with her supervisor.
	Ga. Code Ann. § 43-36-14 (1985)	Restricts the questions which may be asked by a polygraph examiner during a polygraph examination.
HAWAII	Hawaii Const. art. I, § 6	"The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right."
	Hawaii Rev. Stat. § 378-21 (1968)	A private employer or his agent may not "require" an employee to submit to a polygraph examination.
	Hawaii Rev. Stat. § 831-3.1(b) (1968)	In connection with applications for employment, the state may not give out information of arrests which are not followed by convictions.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Nakano v. Matayoshi, ___ Hawaii ___, 706 P.2d 814 (1985)	State constitutional provisions on privacy give the people a legitimate expectation of privacy where their personal and financial affairs are concerned; however, state employees or employees of political subdivisions may not reasonably expect that their interest in avoiding disclosure of financial affairs is protected to the same extent as that of other citizens in light of constitutional language subjecting them to a code of ethical conduct. Const. art. 1, § 6; art. 14.
IDAHO	Idaho Code § 44-903 through § 44-904 (Supp. 1975)	No person, firm, or corporation shall "require" an applicant or employee to take a polygraph examination as a condition of employment.
	Baker v. Burlington Northern, Inc., 99 Idaho 688, 587 P.2d 829 (1978)	An employer's disclosure by letter of an employee's criminal record resulting from a guilty plea was a disclosure of public, not private, facts where the employee's criminal activity was recent and he was still on probation with no determination having been made as to his rehabilitation at the time the letter in question was written. The employer's publication was merely a recitation of a public record of the employee's recent criminal activity and, thus, was not an actionable invasion of privacy.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
ILLINOIS	Ill. Const. art. I, § 6	"The people shall have the right to be secure in their persons, houses, papers, and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause and supported by an affidavit particularly describing the place to be searched and the persons to be seized."
	Ill. Rev. Stat. ch. 111, § 2401 (1973)	Sets forth licensing procedure for polygraph examinations.
	Illinois State Employees Ass'n v. Walker, 57 Ill.2d 512, 315 N.E.2d 9 (1974), cert. denied, 419 U.S. 1058 (1974)	Financial disclosures required of state employees do not deprive them of their right to privacy.
	Oden v. Cahill, 79 Ill. App.3d 768, 35 Ill. Dec. 111, 398 N.E.2d 1061 (Ill. App. Ct. 1979)	The Illinois Civil Service Commission did not invade a police applicant's right to privacy by utilizing information which was ordered expunged from the applicant's record in its hiring decision. The court recognized no right of privacy in information which "already is, or can legally be made public."
	Ill. Rev. Stat. ch. 68 § 2-103 (1973)	It is a civil rights violation for any employer to inquire on an employment application whether a job applicant has ever been arrested.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
INDIANA	Ind. Code § 4-1-6 (1981)	Governs the maintenance and disclosure of personal information by state agencies.
IOWA	Winegard v. Larsen, 260 N.W.2d 816 (Iowa 1978)	The State of Iowa recognizes a common-law tort for invasion of privacy.
	McDonell v. Hunter, 612 F. Supp. 1122 (S.D. Iowa 1985)	State correctional facility personnel may be held liable for invasion of an employee's right to privacy where a correctional facility (1) does not utilize a reasonable method for searching employees, such as "pat-down" or inspection of purses or packages, (2) conducts a strip search of employees without "reasonable suspicion," (3) conducts a search of an employee's vehicle which is not within the confines of the correctional facility, or (4) demands a blood or urine sample of an employee without "reasonable suspicion." An employee's consent to various searches is applicable to "reasonable" searches as determined by the circumstances.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Anderson v. Low Rent Housing Commission of Muscatine, 304 N.W.2d 239 (Iowa 1981), cert. denied, 454 U.S. 1086 (1981)	A former employee did not consent to an invasion of her privacy by going to the media in response to publication of the reasons for her termination. The former employee's actions were taken to mitigate damages and were not proof of consent to the publication of false statements regarding her termination.
	Iowa Code § 730.4(1) through § 730.4(3) (1983)	An employer shall not "require" an applicant for employment to take a polygraph examination as a condition of employment.
KANSAS	Atchison, Topeka, and Sante Fe Railway Co. v. Lopez, 216 Kan. 108, 531 P.2d 455 (1975)	Enforcement of a Railway Commission subpoena requiring production of arrest and conviction records of all employees was not deemed to be an invasion of the employees' privacy.
	Johnson v. Boeing Airplane Co., 175 Kan. 275, 262 P.2d 808, (1953)	An employee waived his right to privacy by voluntarily posing for a picture which was subsequently published by the company in an advertisement for the equipment which the company manufactured.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
KENTUCKY	Douthitt v. Kentucky Unemployment Ins. Comm'n., 676 S.W.2d 472 (Ky. Ct. App. 1984)	An employer's requirement that an employee submit to a polygraph test is an unreasonable rule. The results of the test could not be used to show misconduct in light of the unreliability of such examinations. The claimant's refusal to submit to tests could not be used to show misconduct sufficient to deny employment compensation benefits. Ky. Rev. Stat. 341.370(1)(b) (Baldwin).
	Board of Educ. of Fayette County v. Lexington-Fayette Urban County Human Rights, 625 S.W.2d 109 (Ky. Ct. App. 1981)	The Urban County Human Rights Commission brought an action on behalf of an employee against the Board of Education to compel disclosure of personnel records in an effort to identify sexual discrimination against the employee. In permitting disclosure, the court ordered the personnel records "sanitized" of material not germane to the information sought.
LOUISIANA	Cangelosi v. Schwegmann Brothers Giant Supermarkets, Inc., 379 So.2d. 836, (La. Ct. App. 1980), aff'd 390 So.2d 196 (La. 1980)	An employer did not invade a cashier employee's right to privacy where the employer questioned the employee in a reasonable manner regarding an altered check.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Public Employees Ass'n. of New Orleans, Inc. v. City of New Orleans, 404 So.2d 537 (La. Ct. App. 1981)	The city of New Orleans did not intrude upon employees' privacy by requiring that they complete a questionnaire directed at the discovery of whether city employees were employed in other occupations while employed with the city. The court recognized the city's interest in avoiding conflicts of interest by its employees.
	Love v. Southern Bell Telephone and Telegraph Co., 263 So.2d 460 (La. Ct. App. 1972), writ. denied, 262 La. 117, 266 So.2d 429 (1972)	An employer was held liable for invading a former employee's right to privacy where the employer utilized information in his disciplinary proceeding acquired when employees entered the former employee's trailer and found him intoxicated.
MAINE	Me. Rev. Stat. Ann. tit. 32, § 631 (Supp. 1982-83)	Provides for the right of employees or former employees to review their personnel files.
	Me. Rev. Stat. Ann. tit. 32, § 7166(1)(3) (Supp. 1982-83)	An employer may not directly or indirectly "require," "request" or "suggest" that any applicant or employee submit to a polygraph examination as a condition of employment. This section does not apply to employees or applicants for employment with a law enforcement agency.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
		An employer may request a polygraph examination, but the employer may not use the results against the employee for any purpose. The employee must receive a copy of this act and is entitled to have a witness of his/her choice present for any polygraph testing.
	Hudson v. S.D. Warren Co., 608 F. Supp. 477 (D. Me. 1985)	In a privacy claim for public disclosure of private facts, the plaintiff must allege that publicity was given to facts about the plaintiff's private life that would be highly offensive to a reasonable person and that are not of legitimate concern to the public. An employee's allegation that he was terminated because an undercover police agent falsely reported to his employer that he had consumed alcohol on the job and offered the agent alcohol, was insufficient to state a claim for invasion of privacy based upon public disclosure of private facts. The disclosure was not to the public but to a small group of persons who had a legitimate interest in the information disclosed.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Tucci v. Guy Gannett Pub. Co., 464 A.2d 161 (Me. 1983)	The plaintiff, who was a police officer when an alleged cheating incident occurred and then a city councilor when articles and editorials about the alleged incident appeared in newspapers, was a "public official" for purposes of a libel action and, thus, was required to prove not only that defamatory statements were false, but that the defendants made statements with actual malice, that is, with knowledge that they were false or with reckless disregard for their accuracy.
MARYLAND	Md. Ann. Code art. 100, § 95 (Supp. 1975)	No employer may demand or require an employee or applicant to submit to a polygraph examination. This section does not apply to the federal government or any agency thereof.
	Md. Ann. Code art. 100 § 95(A), (Supp. 1975)	An employer may not require an applicant to answer, orally or in writing, "questions pertaining to any physical, psychological, or psychiatric illness, disability or treatment which does not bear a direct material and timely relationship to the applicant's fitness or capacity to properly perform the activities of the desired position."

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Pemberton v. Bethlehem Steel Corp., 66 Md. App. 133, 502 A.2d 1101 (Md. Ct. Spec. App. 1986), cert. denied, 306 Md. 289, 508 A.2d 488 (1986)	Surveillance, consisting of observing a union business agent outside his residence, what appeared to be his girlfriend's home, a shopping center, a convenience store and along public roads and which was conducted in such a way that the subject was unaware of the surveillance, did not constitute an actionable invasion of privacy as an intrusion upon seclusion. Parties who were allegedly involved in the mailing of excerpts from detective reports to surveilled subject's wife were not liable for an invasion of privacy on the theory of publication of matters concerning one's private life, as the mailing of the reports to subject's wife did not constitute a publicizing of the reports or the information contained therein. Circulating criminal records of a labor union business agent to union members did not constitute an invasion of privacy on the theory of publication of matters concerning one's private life, as criminal records are not private facts. Circulation of a "mug shot" was not an actionable invasion of privacy based on the theory of publication of matters concerning one's private life.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
MASSACHUSETTS	Mass. Ann. Laws ch. 214, § 1B (Michie/Law. Co-Op. 1982-83)	A person shall be protected against unreasonable, substantial, or serious interference with his privacy and the Superior Court shall have jurisdiction to award damages.
	Mass. Gen. Laws. Ann. ch. 149 § 19(B) (West Supp. 1985)	No employer shall request any employee, including police officers, to submit to a polygraph examination as a condition of employment. This section does not apply to polygraph testing administered by law enforcement agencies as may otherwise be permitted in criminal investigation.
	Mass. Gen. Laws Ann. ch. 276 § 100 A(4) (West Supp. 1982-83)	Applications for employment must include a provision notifying applicants that they may answer "no record" to inquiries regarding prior arrest records if their criminal records have been "sealed."
	Pottle v. School Committee of Braintree, 395 Mass. 861, 482 N.E.2d 813 (1985)	The disclosure of the names and addresses of public school employees does not constitute an unwarranted invasion of personal privacy in that school employees, by virtue of their public employment, have diminished expectations of privacy, and the names and addresses are available from other sources.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
MICHIGAN	Ledl v. Quik Pik Food Stores, Inc., 133 Mich. App. 583, 349 N.W.2d 529 (1984)	A discharged employee could not recover damages on the "false light" theory for invasion of privacy based upon an alleged communication to various persons by the former employer that the discharge was due to inventory shortages. The reason for termination was not broadcast to the public or to a large number of persons and the employee did not dispute that she was, in fact, terminated for inventory shortages.
	Michigan Polygraph Protection Act of 1981, Mich. Comp. Laws Ann. § 37.201 (West 1985)	Prohibits an employer from (1) requiring an employee or applicant to submit to a polygraph examination as a condition of employment and (2) from discriminating against employees for their refusal to submit to a polygraph examination. The Act also sets forth guidelines to be followed when an employee requests a polygraph examination.
	Mich. Comp. Laws § 423.501 (Supp. 1982-83)	Provides for the employee's right to inspect his/her personnel file.
	Mich. Comp. Laws § 423.506 (Supp. 1982-83)	Prohibits an employer from revealing any disciplinary actions to a third party unless the employee referred to is notified, by first class mail on or before the date on which the information is divulged. This section does not apply to information requested by the government.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
MINNESOTA	Minn. Stat. Ann. § 181.75 (Supp. 1975)	An employer may not, directly or indirectly, "solicit" or "require" a polygraph examination of an employee or applicant. If the employee requests a polygraph examination, the employer must inform the employee that the test is voluntary.
	Minn. Stat. Ann. § 181.76 (Supp. 1975)	If an employee requests and submits to a polygraph examination, the results of the examination may only be distributed to those persons who are authorized by the employee to receive the results.
	Minn. Stat. Ann. § 364.04 (Supp. 1975)	The State of Minnesota may not use, distribute, or disseminate the following in connection with an application for public employment: arrest records not followed by convictions, convictions which have been annulled or expunged, or misdemeanor offenses for which no jail sentence can be imposed. Violation of this section constitutes a violation of an individual's civil rights.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Kamrath v. Suburban National Bank, 363 N.W.2d 108 (Minn. Ct. App. 1985)	A bank employer who, in violation of a statute, requested an employee to submit to a polygraph examination was held liable for invasion of the employee's right to privacy and intentional infliction of emotional distress as evidenced by the employee's nightmares and bed wetting following the examination. Attorney's fees of $30,000 were granted as well as personal damages exceeding $100,000.
MISSISSIPPI	Hooks v. McCall, 272 So.2d 925 (Miss. 1973)	A discharged employee may not base a slander claim upon another employee's statement to her superior that the discharged employee was stealing equipment belonging to the employer where there was no showing that the statements were made with malice. The court noted that the discharged employee did not demonstrate that his termination was based upon the other employee's statement of his alleged thefts.
MISSOURI	Lile v. Hancock Place School District, 701 S.W.2d 500 (Mo. Ct. App. 1985)	A teacher's right of privacy was not violated where the teacher was terminated due to alleged "immoral conduct" committed in his home involving two school-aged daughters of the woman with whom he lived.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Duckworth v. Sayad, 670 S.W.2d 88 (Mo. Ct. App. 1984)	The police department's termination of a police officer who allegedly engaged in sexual misconduct in a dormitory room while accompanying a youth group on a five-day conference constituted an invasion of the terminated police officer's privacy. The court noted that there is an expectation of privacy in a dormitory room at 1:45 a.m. Reinstatement and back pay were ordered.
MONTANA	Mont. Const. art. II, § 10	"The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."
	Mont. Code Ann. § 39-2-304 (1983)	An employer may not "require" an employee or applicant to submit to a polygraph examination.
	Storch v. Board of Directors, 169 Mont. 176, 545 P.2d 644 (1976)	No invasion of privacy was found where a drug consultant was discharged based upon his "personal lifestyle." What an employee does in his private life should not be his employer's concern unless, as in this case, the employee was engaged in counseling people with personal problems, thus making his own personal philosophies relevant to his job performance.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
NEBRASKA	Neb. Rev. Stat. § 81-1932 (Supp. 1980)	An employer may not "require" an employee or applicant to submit to a "truth and deception" examination unless such employment involves law enforcement. Section 81-1932 sets forth the procedures to be followed when an employer "requests" that an employee submit to a polygraph examination.
NEVADA	Nev. Rev. Stat. § 648.183 (1981)	Sets forth standards applicable to the administration and utilization of polygraph examination results.
	Kemp v. Block, 607 F. Supp. 1262 (D. Nev. 1985)	An employee had no reasonable expectation that his argument in the work area with a foreman would be private since the argument took place in loud voices, the co-worker who recorded the conversation was in a place where he had a right to be, and the employee had no right to prevent other persons from entering the work area while the argument ensued. The employee had no cause of action based either on invasion of privacy or under a statute prohibiting the willful interception of certain oral communications.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Dunphy v. Sheehan, 92 Nev. 259, 549 P.2d 322 (1976)	The financial disclosure provisions of an ethics in government law requiring public officers to make certain financial disclosures were found to be unconstitutionally vague and an over-broad intrusion upon the right to privacy of public officers.
NEW HAMPSHIRE	N.H. Rev. Stat. Ann. § 275.56 (Supp. 1983)	Defines employees' rights and the procedure to be followed in regard to employees' inspection of their personnel files.
NEW JERSEY	N.J. Rev. Stat. § 2A:170-90.1 (1971)	An employer who "requests" or "requires" an employee or applicant to submit to a lie detector test commits a disorderly persons offense. This section does not apply to employers who are manufacturers, distributors, or dispensers of controlled substances. This section does provide the procedure for administration of the lie detector test in the above circumstances.
	Devlin v. Greiner, 147 N.J. Super. 446, 371 A.2d 380 (N.J. Super. Ct. Law Div. 1977)	New Jersey permits the common law privacy actions, recognized in the Restatement (Second) of Torts, § 652 (1977).

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
NEW MEXICO	Gengler v. Phelps, 92 N.M. 465, 589 P.2d 1056 (N.M. Ct. App. 1978), cert. denied, 92 N.M. 353, 588 P.2d 554 (1979)	A former employee could not base a slander action upon his former employer's giving of a "less than desirable reference" to a potential employer. A former employer has absolute immunity from damages in a slander suit when the alleged defamation stems from an inquiry addressed to the former employer and concerns an employee's job capabilities.
NEW YORK	Caesar v. Chemical Bank, 66 N.Y.2d 698, 487 N.E.2d 275, 496 N.Y.S.2d 418 (1985)	A bank employee, on behalf of himself and all other employees similarly situated, brought suit against his employer for making use of the employees' photographs in advertisements without obtaining their written consent. The bank employer's statement that it obtained oral consent of employees was only a partial defense in mitigation of damages.
	DeLury v. Kretchmer, 66 Misc.2d 897, 322 N.Y.S.2d 517 (N.Y. Sup. Ct. 1971)	Sanitation employees' rights to privacy were not invaded where pictures of them were taken without their permission to be shown to witnesses who claimed that sanitation employees were collecting waste from commercial enterprises for their own remuneration.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	N.Y. Labor Law § 735 (McKinney Supp. 1982-83)	No employer or his agent will "require," "request," "suggest," or "knowingly" permit any employee or applicant to submit to a "psychological stress evaluator" examination and no employer shall administer or utilize the results of such test for any reason whatsoever. This section does not apply to criminal investigations.
NORTH	Trought v. Richardson, 78 N.C. App. 758, 338 S.E.2d 617 (1986)	A discharged hospital employee had no claim against the hospital or other employees for invasion of privacy based upon public disclosure of private facts where the other hospital employees stated in an employee meeting that the discharged employee's reason for termination was "lack of credibility."
NORTH DAKOTA	City of Grand Forks v. Grand Forks Herald, Inc., 307 N.W.2d 572 (N.D. 1981)	A former chief of police's personnel file, maintained by the city's director of personnel, was subject to disclosure because it constituted a "public record" within the meaning of article XI, § 6 of the North Dakota Constitution and § 44-04-18 of the North Dakota Century Code.
OHIO	Ohio Rev. Code Ann. § 2953.43(A)-(B) (Baldwin 1979)	Applicants for employment may respond to inquiries regarding expunged arrest records as if the arrest did not occur. State officers and employees may not make available for employment purposes any information regarding expunged arrest records.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Dispatch Printing Co. v. Wells, 18 Ohio St.3d 382, 481 N.E.2d 632 (Ohio 1985)	A newspaper was entitled to reasonable access to all information contained in a former police chief's personnel files following his demotion to detective which could be released under a statute governing public records.
OKLAHOMA	Simmons v. Southwestern Bell Telephone Co., 452 F. Supp. 392 (W.D. Okla. 1978), aff'd 611 F.2d 342 (10th Cir. 1979)	An employer did not invade a former "test desk" employee's constitutional right to privacy where the employer monitored employee's telephone conversations which were conducted at a "test desk" telephone. The former employee had no reasonable expectation of privacy where the employee was informed that the telephones would be monitored.
OREGON	Or. Rev. Stat. § 659.225 (1974)	An employer may not "require" an employee to submit to a polygraph examination or a Breathalyzer test, although an employee may consent to the test. If an employer has reasonable grounds for belief that an employee is intoxicated, the employer may require the employee to submit to a blood alcohol or Breathalyzer test administered by a third party.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	McLain v. Boise Cascade Corp., 271 Or. 549, 533 P.2d 343 (1975)	An employee seeking worker's compensation waives his right of privacy to the extent of a reasonable investigation by employer or his agents regarding the employee's alleged injury. Any surveillance by the employer or his agents must be conducted in a reasonable and unobtrusive manner.
	Bodewig v. K-Mart, Inc., 54 Or. App. 480, 635 P.2d 657 (Or. Ct. App. 1981), review denied, 292 Or. 450, 644 P.2d 1128 (1982)	The conduct of a male store manager in requesting a female employee to submit to a strip search to prove to a customer that she did not steal the customer's money may be found unreasonable.
	Patton v. J.C. Penney, 122 L.R.R.M. (BNA) 2445, Nos. S32302 and S32330 (Or. 1986)	An employer did not invade an at-will employee's right to privacy, nor was the employer liable for infliction of emotional distress, when the employer fired the employee for refusing to discontinue a relationship with a female co-worker.
PENNSYLVANIA	Pa. Stat. Ann. tit. 18, § 7321 (1973)	An employer may not "require" an employee or other individual to submit to a polygraph examination as a condition of employment. This section does not apply to "employees or other individuals in the field of public law enforcement or who dispense or have access to narcotics or dangerous drugs."

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Duquesne Light Co. v. Commonwealth Unemployment Compensation Board of Review, 82 Pa. Commw. 34, 474 A.2d 407 (Pa. Commw. Ct. 1984)	An employee's exercise of his legally protected right, under the federal Privacy Act, not to disclose medical information required for renewal of his nuclear control operator's license cannot disqualify the employee for unemployment compensation benefits where the employer discharged rather than transferred him to another position and where the employee was both eligible and willing to transfer to the other position.
	Pryor v. Commonwealth Unemployment Compensation Board of Review, 82 Pa. Commw. 523, 475 A.2d 1350 (Pa. Commw. Ct. 1984)	An employee was unreasonable in her refusal to submit to an employer-requested psychiatric examination due to her fear that doing so would reveal information which would then be forwarded to the employer and which might be detrimental to the litigation she presently pursued against the employer. Thus, she was properly denied unemployment compensation benefits.
RHODE ISLAND	R.I. Rev. Laws Ann. § 28-6.1-2 (1969)	No employer shall "require" any employee to submit to a polygraph examination as a condition of employment. This section does not apply to law enforcement agencies in the performance of their official duties.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	R.I. Gen. Laws § 28-5-7(G) (1979)	An employer may not, orally or in writing, inquire about information regarding an applicant's prior arrests or criminal charges. An employer may ask an applicant about criminal convictions.
	DeBiasio v. Gervais Electronics Corp., 459 A.2d 941 (R.I. 1983)	An employee was entitled to disclosure of an employer's income tax return to determine whether the employer owed the employee bonuses for 1977 and 1978. To prevent a "fishing expedition" and to protect the privacy of the employer, the employer was compelled to produce only those portions of its income tax returns needed to calculate net profits.
SOUTH CAROLINA	S.C. Const. art I, § 10	"The right of the people to be secure in their houses, persons, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated . . . ."
	Satterfield v. Lockheed Missiles and Space Co., 617 F. Supp. 1359 (D.S.C. 1985)	An employer did not invade an at-will employee's right to privacy when the employee was terminated based on a positive urinalysis to detect drug use. The only publication of the test results and the reason for termination were made by the employee.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
SOUTH DAKOTA	Ruple v. Weinaug, 328 N.W.2d 857 (S.D. 1983)	A communication sent by a city manager to a mayor with respect to a finance officer's problems was privileged in that it was made in the city manager's capacity as an officer and a public official. The communication did not support the finance officer's claim of defamation, libel, and slander since it was without malice and made in proper discharge of the city manager's official duties.
TENNESSEE	Tennessee Human Rights Comm'n. v. Alcoa City Schools, ___ S.W.2d ___ (Tenn. Ct. App. February 12, 1986)	Teachers' personnel records are not deemed "confidential" so as not to exempt them from review and disclosure in the investigation of employment discrimination.
	Tenn. Code Ann. § 49-224 (1979)	Any state employee is entitled to have access, at any reasonable time, to his personnel files.
TEXAS	Polygraph Examiner's Act, Tex. Civ. Stat. Art. 4413 (29cc) (Vernon 1976)	A polygraph examiner must inform an employee that a test is voluntary.
	Talent v. City of Abilene, 508 S.W.2d 592 (Tex. 1974)	An employer may require public employees to submit to a polygraph examination where the employer has reason to believe that the employee's official duties have been conducted illegally. The court recognized the possibility of a tort liability in questioning an employee regarding his "life" outside the work place.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
UTAH	Utah Code Ann. §§ 67-18-1, 67-18-5 (1983)	Public employees have the right to examine and make copies of documents in their personnel files. Documents classified as "confidential" may not be copied or examined.
	Kutv, Inc. v. Utah State Bd. of Education, 689 P.2d 1357 (Utah 1984)	The results of a survey administered to school personnel which was designed to elicit responses concerning discrimination in high school were considered "public records" and therefore subject to disclosure, although disclosure might prove embarrassing and detrimental to certain individuals.
VERMONT	Vt. Stat. Ann. tit. 1, § 317(b)(7) (Supp. 1982)	Personnel files are not considered "public records" and are therefore not subject to inspection by any person other than the employee to which the files pertain or his/her designated representative.
	Vt. Stat. Ann. tit. 21, § 494a (1985)	An employer may not "require," "request," or "suggest," directly or indirectly, that an employee submit to a lie detector test as a condition of employment.
VIRGINIA	Privacy Protection Act of 1976, Va. Code § 6.1-377 (1983)	Provides rules for maintenance, use, and dissemination of personal information.
	Va. Code § 8.01-40 (1977)	Prohibits the use of a person's name, portrait or picture, without his consent, for commercial purposes.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Brown v. American Broadcasting Co., 704 F.2d 1296 (4th Cir. 1983)	An action for invasion of privacy in Virginia is limited to the right created by Va. Code Ann. § 8.01-40.
WASHINGTON	Wash. Const. art. I, § 7	"No person shall be disturbed in his private affairs, or have his home invaded, without authority of law."
	Wash. Rev. Code § 49.44.120 (1985)	An employer may not "require," directly or indirectly, any employee or applicant to "take" or "be subjected" to a lie detector test or a similar test as a condition of employment. An employee who is required or requested, as a condition of employment, to take a lie detector test may maintain a private right of action and recover attorney's fees. This section does not apply to persons seeking employment with law enforcement agencies. This section does not apply to the initial application or continued employment of persons who manufacture, distribute or disperse controlled substances, or to persons in sensitive positions directly involving national security.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Eastwood v. Cascade Broadcasting Co., 106 Wash.2d. 466, 722 P.2d 1295 (1986)	A cause of action exists in the State of Washington for the tort of "false light" which consists of the publication of a statement which is highly offensive to a reasonable person and places the plaintiff in a false light in the public eye.
	Jeffers v. City of Seattle, 23 Wash. App. 301, 597 P.2d 899 (1979)	A former police officer, by requesting a disability pension and its continuation, waived his right of privacy pertaining to his medical condition.
WEST VIRGINIA	United States v. Westinghouse Electric Corp., 638 F.2d 570 (3d Cir. 1980)	An employer was not permitted to raise a claim on behalf of employees for invasion of privacy where the National Institute for Occupational Health and Safety (NIOSH) sought disclosure of employee medical records for investigative purposes. Employees' rights could be amply protected by NIOSH informing the employees that their medical records would be reviewed, thus providing an opportunity for each employee to personally raise an invasion-of-privacy claim.
WISCONSIN	Wisc. Stat. Ann. § 895.50 (1983)	Provides a statutory right to privacy, as stated in Restatement (Second) of Torts § 652 (1977) and sets forth the relief available when the right to privacy is violated.

STATE	STATUTES/CASE LAW	SCOPE OF RIGHT
	Wisc. Stat. Ann. § 942.06 (1982)	An employer may not "require" or "administer" a polygraph examination or any similar test to detect honesty without prior written and informed consent of the subject. The third-party disclosure of polygraph examination results is prohibited unless there is written and informed consent of the subject.
	Wisc. Stat. Ann. § 103.13 (1974)	Provides an employee the right to inspect personnel documents used to determine employee's qualifications for employment, transfer, additional compensation, termination or other disciplinary action, and medical records.
	Hirsch v. S.C. Johnson & Son, Inc., 90 Wis.2d 379, 280 N.W.2d 129 (1979)	A person's right to compensation for the use of his name for advertising or trade purposes is distinct from other privacy torts which protect primarily the mental interest in being left alone. A cause of action for appropriation of a person's name for commercial use exists as a matter of Wisconsin common law.
WYOMING	Board of Trustees of Weston County School Dist. No. 1 v. Holso, 584 P.2d 1009 (Wyo. 1978), reh. denied, 587 P.2d 203 (Wyo. 1978)	A school superintendent's recommendation to terminate a teacher because of the teacher's alleged immorality violated the teacher's constitutional right to privacy.

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